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Child Abuse and Neglect State Statutes Series

Issue Paper

Due Process and Central Registries: An Overview of Issues and Perspectives



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Issue Papers provide a comparative overview of legislation across States, including common elements and variations. Legal references are current as of September 2002.

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I. INTRODUCTION

Several due process and protection issues arise when a State maintains a central registry that identifies individuals accused of child abuse or neglect. Organizations designed to protect or care for children have a strong interest in maintaining information in a central registry. The following scenarios demonstrate how critical this information can be to the goal of protecting children:

- A case worker handling a new case of alleged physical abuse learns from the central registry that the child's stepfather was the confirmed perpetrator of abuse of another child.
- A case worker working on a case discovers from consulting the central registry that a child has been abused before by other perpetrators, and this affects the worker's treatment plan.
- A child care center operator learns from the central registry that an applicant for a child care position is listed on the registry as a confirmed perpetrator of sexual abuse.

There are many similar scenarios and many different helpful uses for the information maintained on central registries. This readily available information can quite arguably save lives. Child protective services agencies in particular have an interest in maintaining central registry information to assist in the identification and treatment of abused and neglected children, to identify tendencies in child maltreatment cases, to develop a plan for intervention, to reveal patterns of re-reporting and re-abuse, to find mandated reporters, and to assess risk in reports.

Likewise, persons accused of child abuse or neglect may have compelling reasons for wanting information expunged from the central registry. For example:

- A dedicated high school teacher with an unblemished record is accused of sexually abusing one of her students; the teacher—acquitted of all criminal charges against her—loses her job and is unable to get another one because the information about the accusation is still maintained on the central registry.
- A married couple applying to adopt a child are rejected because information about an incident of suspected (but not confirmed) abuse by one of the applicants is still on the registry several years after it was originally reported.

These individuals are likely to assert that the listing of their names in the central registry deprives them of a constitutionally protected interest without due process of law. The teacher might argue that her constitutionally protected property interest in employment is implicated. The couple is likely to assert that their constitutionally protected liberty interest in having a family is threatened. In short, from the alleged perpetrator's perspective, constitutionally protected due process rights are being violated.

Increased legislation and law suits reflect the tension between these conflicting interests with the balance seemingly tilted—as will be seen—toward maintaining information on the registry rather than expunging it. It is important that both legislators and policy makers understand both sets of interests to achieve balance. This discussion will provide a framework

for understanding the social and legal issues involved by briefly addressing: (1) the historical background and the various interests involved when child protective service agencies and others have access to child abuse and neglect information maintained on a central registry; (2) the need to balance these interests; (3) the nature of the constitutionally protected due process interest of the alleged perpetrator of abuse or neglect; and (4) various procedural safeguards offered by Federal and State laws.

II. BACKGROUND

During the past few decades, increased reports of child abuse and neglect, coupled with advancements in computer technology, have led to the development of central registries capable of maintaining large quantities of accessible data about child abuse and neglect reports. The Federal government took a leading role in advancing this trend with the passage of the Child Abuse Prevention Treatment Act (CAPTA) in 1974.¹ CAPTA provided many States with Federal funds to develop, strengthen, and refine their central registries. As a result, every State has developed procedures for maintaining records of these reports.² In fact, most States maintain some sort of central registry of the results of the child abuse and neglect investigations.³ Most States have statutorily created central registries, though it is not uncommon for States to broadly introduce the concept of a central registry in legislation and then set forth details of their operation in administrative rules and regulation.⁴ Because each State determines how its registry will operate, the terms of operation are likely to vary significantly from State to State. For example, the information included in the registry or the information an individual is able to gain access to from the registry may not be the same from one State to another. Likewise, the length of time information will be maintained on the registry will vary. Examples of information some States have decided to include in these registries are the name of the child who is the subject of the child abuse and neglect report; the name of the mother, father, or guardian of the child; the name of any siblings; the name of the alleged perpetrators; and the findings of the particular investigation.⁵ Once this information is gathered, States must address the purpose and permitted or mandated uses of the information.

III. THE PURPOSE AND MANY USES OF CENTRAL REGISTRIES

Central registries were originally designed to assist in the identification and treatment of abused and neglected children and their families, and that continues to be their purpose. States actually use the information maintained in the central registries in many different ways.

¹ 42 U.S.C.A. § 5101 *et. seq.* (West 1995).

² See Jill D. Moore, Comment, *Charting a Course between Scylla and Charybdis: Child Abuse Registries and Procedural Due Process*, 73 N.C.L. Rev. at 2079 (1995).

³ *Ibid.*

⁴ See, e.g., Del. Code Ann. tit. 16, § 905(c) (Supp. 1998). See also Ark. Code Ann. § 12-12-505(c) (Supp. 2001).

⁵ For example, the State of Georgia's abuse registry includes the name and classification of the alleged child abuser and the investigator's report regarding that individual Ga. Code § 49-5-184(a) (1996). New York State includes, but does not limit the registry, to all of the information in the written report; a record of the final disposition of the report, including services offered and services accepted; the plan for rehabilitative treatment; the names and identifying data, dates, and circumstances of any person requesting or receiving information from the register; and any other information that the commissioner believes might be helpful in furtherance of child protection purposes. N.Y. Soc. Serv. Law § 422(3) (McKinney 2001).

Researchers sometimes use the information to identify tendencies in child maltreatment cases. The registry is likely to be a useful source of information about the extent and nature of child abuse and neglect in the State.⁶ Analysis of the information maintained in the central registry may indicate, for example, that certain groups of people tend to report cases, that certain types of cases are reported, or that children who are subjects of the reports are likely to come from particular environments.⁷ Also, in some cases, with sufficient information, accessed information may reveal patterns of re-reporting and re-abuse on the same child or parent. The availability of this information will largely depend upon central registry requirements for entering names—that is, for example, whether the child was the subject of investigation, whether the report is only maintained if there was a finding in the matter, and whether the information is only maintained for a limited period of time. Other common uses for the information are to develop a plan for intervention in a particular case, to use as an intrajurisdictional and interjurisdictional source of information, to find mandated reporters in protective custody actions, to assess risk in new reports, and to generally determine who is accessing and using the registry information.⁸

In addition, central registries are increasingly used to screen adults for various employment or license eligibility. About half the States, for example, allow or require central registry checks for individuals applying to be child or youth care providers, foster parents, or adoptive parents.⁹ Accessible central registry information may thus be available to employers in the child care business, schools, health care providers, or agencies that certify foster parents or arrange adoptions.¹⁰

IV. BALANCING OF DIFFERING INTERESTS WITH RESPECT TO CENTRAL REGISTRY INFORMATION

The above scenarios demonstrate the competing interests at stake with respect to central registry information. Alleged perpetrators have an interest in protecting their various property and liberty interests—sometimes recognized, for example, as a right to maintain employment, family integrity, or a family-child relationship. These interests are so highly valued in our society that they are constitutionally protected by the Due Process Clause of the U.S. Constitution. Child protective services agencies and other organizations are likely to view central registries as extremely useful for reasons already mentioned and critical to the completion of their mission. But the usefulness of the central registry information to child protective service agencies and other organizations serving children will be limited by procedural protections States deem necessary to protect the constitutional rights of alleged perpetrators. States must balance these competing interests by performing the difficult task of enacting legislation or instituting rules or regulations, or policies that both address the due process concerns while achieving the intent of CAPTA that registries be used to protect children.

⁶ See Note 1 at 2081.

⁷ Davidson, H., *CPS Central Registry Controversies "At-A-Glance"* at 1.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ See Note 1 at 2082-3.

V. WHAT IS DUE PROCESS?

Persons whose names are listed as alleged perpetrators in a central registry have asserted that the listing of their name in the central registry deprives them of a constitutionally protected interest without due process of law.¹¹ The Fourteenth Amendment of the U.S. Constitution guarantees that no State shall "deprive any person of life, liberty, or property, without due process of law." One commentator explains that¹² "the United States Supreme Court has interpreted this clause to mean that States must provide constitutionally sufficient procedures—'procedural due process'—before taking an action that has the effect of terminating an interest in life, liberty, or property that is subject to constitutional protection."¹³

The U.S. Supreme Court has asked two questions when considering due process issues in this context: first, whether the State involved intruded upon a constitutionally protected interest; and second, whether the established procedures surrounding the intrusion were constitutionally sufficient.¹⁴

First, to decide whether there is a constitutionally protected interest, the Supreme Court has established a "stigma plus" test. This test "requires that stigma or damage to reputation be accompanied by some other cognizable interest in order to invoke the protections of the Due Process Clause."¹⁵

Second, to determine whether the established procedures surrounding the intrusion were constitutionally sufficient, courts must consider three distinct factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and third, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.¹⁶

As we shall see, once courts decide that there is a constitutionally protected interest, they typically look to the procedures established in State statutory law to decide whether the procedures surrounding the intrusion were constitutionally sufficient.

¹¹ *Ibid.*

¹² U.S. CONST. Amend. XIV, sec. 1.

¹³ *See* Note 1 at 2084.

¹⁴ *Board of Regents v. Roth*, 408 U.S. 564, 569-70 (1972).

¹⁵ *See* Note 1 at 2100 (footnotes omitted).

¹⁶ *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976).

VI. WHAT IS THE PRIVATE INTEREST AT STAKE WITH RESPECT TO CENTRAL REGISTRY INFORMATION AND DOES IT SATISFY THE "STIGMA PLUS" TEST FOR DUE PROCESS PROTECTION?

First, courts must decide whether there is a constitutionally protected interest implicated in maintaining information on a child abuse and neglect central registry. One commentator describes the interest as follows: "[w]hen a State chooses to place an individual's name on a child maltreatment central registry, it is taking an action that potentially could affect that individual's family life, his employment prospects, or even his reputation in the community, if registry information becomes known to the public."¹⁷ Courts apply the "stigma plus" test to particular facts by assessing whether the person whose name was listed as a perpetrator on the central registry established both damage to his or her reputation as well as impairment of some other interest.¹⁸ The following factors seem to sway courts toward finding impairment of some other interest and, therefore, a protectible liberty or property interest.

The central registry is accessible to parties outside the child protective services agency.¹⁹ The list of entities with access to central registries has become endless: day care centers, drop-in centers, nighttime centers, recreation centers, day nurseries, play schools, cooperative child centers, centers for children with special needs, centers serving sick children, infant-toddler programs, school age child care programs, and employer supported centers. Courts are likely to find no constitutionally protected interest if the information is not "published" in this way. For example, a Federal court of appeals in a case originating in Maryland emphasized that the "tangential possibility of public disclosure" of information through "negligent or improperly motivated State employees or fortuitous computer hackers, cannot by itself implicate a constitutional privacy right."²⁰

Entities are allowed or required to resort to use of central registry information before taking some action.²¹ Many States either require or allow parties to check the central registry before taking some action such as licensing, offering employment, or approving an adoption petition.²² In some States, licensing of private child care agencies depends on clearance through the central registry, and any central registry reasons for non-licensure or non-renewal will be revealed.²³ As a result, many private citizens associated with private child care agencies will necessarily learn of the information.²⁴

¹⁷ See Note 1 at 2111.

¹⁸ See, e.g., *Matter of East Park High School*, 714 A.2d 339 (N.J. Super. A.D. 1998). It is interesting to note, however, that the New Jersey state constitution has a broader due process reach than the Fourteenth Amendment and gives plaintiffs a protectible interest in reputation warranting due process protections "without requiring any tangible loss". *Ibid.* at 345 (notes omitted). N.J.S.A. Const. Art. 1, par. 1.

¹⁹ See Note 1 at 2112.

²⁰ *Hodge v. Jones*, 31 F.3d (4th Cir.), *cert. denied*, 115 S. Ct. 581 (1994).

²¹ See *Matter of East Park High School*, Note 16 at 346. N.J.S.A. 30:5B-6.1 to 30:5B-6.9 (1997), a New Jersey state statute, expanded the use of the central registry and required child care center operators to resort to it in connection with seeking new or renewal licensure or approval.

²² See Note 1, 2082-83.

²³ *Matter of East Park High School*, Note 16 at 346.

²⁴ *Ibid.*

The party named on the central registry is foreclosed from employment in child-related activities.²⁵ In New Jersey, child care employers may lose their licenses if they employ persons listed in the central registry.²⁶ One court noted that the fact that a person listed on the registry as a child sex abuser was presently employed as a tenured teacher does not change the result that a due process interest is implicated because even the impairment of future employability is a protectable liberty interest.²⁷ But other courts have concluded that the "foreclosure from the mere expectancy" of employment is not enough to implicate a protected interest.²⁸ In New York, where the statutory law requires employers to state in writing their reasons for hiring persons named on the central registry, the Federal court of appeals has concluded that the resulting change in the individual's status was significant enough to satisfy the "plus" element of the "stigma plus" test.²⁹

The named party's right to adopt a child or to become a foster parent is impaired.³⁰ The stigma plus test can be satisfied and liberty interests implicated by stigmatization plus the impairment of the right to adopt a child or to become a foster parent.³¹

A previously unblemished reputation is irrevocably damaged. A New Jersey court decided, for example, that even where the expansiveness of the notification to others was significantly circumscribed, the previously unblemished reputation of a person reported on the central registry would be irrevocably damaged if the information was shared with even a few private citizens.

Efforts to include an individual on the central registry constitute further official action implicating his status as an exonerated criminal.³² A Georgia court found that the "stigma plus" test was satisfied where an individual had been tried and acquitted of criminal charges of child molestation and the child protective services agency continued its efforts to have the individual listed as "confirmed" on the central registry.³³ The court reasoned that a "party has standing to challenge the constitutionality of a statute if the statute has an adverse impact on that party's own rights."³⁴

VII. ARE THE PROCEDURAL SAFEGUARDS SUFFICIENT TO PROTECT THE CONSTITUTIONALLY IMPLICATED INTEREST?

Once it is clear that there is a constitutionally protected liberty or property interest, courts will look to see whether the procedures in place are sufficient to protect that interest.³⁵ If not,

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *N.J. Youth and Family Services v. M.R.*, 715 A.2d 308, 315 (N.J. Super. A.D. 1998).

²⁹ *Valmonte v. Bane*, 18 F.2d 992, 1002 (2d Cir. 1994).

³⁰ *See* Note 16 at 347.

³¹ *Ibid.*

³² *State v. Jackson*, 496 S.E.2d 912 (Ga. 1998).

³³ *Ibid.* at 915.

³⁴ *Ibid.*

³⁵ *See* Note 14.

they must determine the probable value of additional or substitute procedural safeguards.³⁶ CAPTA provides the general framework for safeguards. States must develop plans that include specific provisions that serve to safeguard constitutional rights and liberties. The ABA Center on Children and the Law has developed a list of necessary procedural protections where an alleged perpetrator is to be listed on a central registry.³⁷

A. Protections Under CAPTA³⁸

Under the Child Abuse Prevention and Treatment Act, in order to be eligible to receive a Federal grant, States must submit State plans that include provisions that require and procedures in place that facilitate the prompt expungement in unsubstantiated or false cases of any records that are (1) accessible to the general public or (2) are used for purposes of employment or other background checks.³⁹ State Child Protective Services Agencies may, however, keep information on unsubstantiated reports in their casework files to assist in future risk and safety assessment.⁴⁰

The CAPTA Amendments of 1996 also require States to preserve the confidentiality of all child abuse and neglect reports and records to protect the privacy rights of parents or guardians except in certain limited circumstances.⁴¹ In addition, the Act prohibits disclosure of confidential child abuse and neglect information to individuals or entities other than those enumerated in the statute.⁴² Those entitled to receive the information are bound by the same confidentiality restrictions as the child protective services agency and must use the information only for activities related to the prevention and treatment of child abuse and neglect.⁴³

B. ABA Center on Children and the Law List of Protections

To assist States in developing and enacting legislation regarding safeguards, the ABA Center on Children and the Law has developed the following model of procedural protections:

- (1) Written notice of the specific allegations and that a person has been identified as a perpetrator and has been or will be listed on the central registry;
- (2) An indication of the adverse consequences of being listed on the central registry;
- (3) An explanation of the right to challenge or expunge the information specifically describing the process;

³⁶ *Ibid.*

³⁷ See Note 5 at 2.

³⁸ 42 U.S.C.A. § 5101 *et. seq.* (West 1995).

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Policy Interpretation Question on Open Courts and Confidentiality Provisions of CAPTA issued by the HHS Children's Bureau June 29, 1998.

⁴² *Ibid.*

⁴³ *Ibid.*

- (4) The State or county must conduct some form of independent review and may have a time deadline for holding the review hearing;
- (5) The alleged perpetrator must be allowed some meaningful access to the child protective services agency record and to adverse material. This access is limited by protections for reporters, child victims, victim treatment information, and those whose safety could be endangered;
- (6) An opportunity to present evidence in support of expungement;
- (7) If the central registry listing is to affect employment or licensing, there must be a showing of a relationship between the maltreatment and the job or volunteer work;
- (8) Some form of appellate or administrative hearing or judicial review;
- (9) Inclusion of the information in the central registry should only be based on a higher standard of evidence than "reason to suspect or believe" or "some credible evidence."⁴⁴

C. State Statutory Procedural Due Process Protections

States have also enacted laws to codify procedures for protecting the due process rights of alleged perpetrators listed on a central registry. Statutory language from three randomly selected states—New York, Washington, and Georgia—demonstrates how the contents of State laws varies.

1. Procedures and Protections for Alleged Perpetrators Named in Report

Certain safeguards serve to protect the interests of those persons whose names are listed in the registry. Mistakes happen. If, for example, a person is wrongly listed in the registry, written notification of that listing and of his or her due process rights as well as meaningful access to information and meaningful review will affect that persons ability to protect his or her interests. Examples of these protections follow.

a. Written Notification

Washington

The State of Washington recently enacted legislation addressing the due process rights of alleged perpetrators of child abuse or neglect whose names are maintained on a central registry.⁴⁵ It expressly requires extensive written notification giving the following explanation of its purpose:

- (1) The legislature finds parents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens,

⁴⁴ *Ibid.*

⁴⁵ Wash. Rev. Code Ann. § 26.44.100 (West Supp. 1999).

including parents, shall be afforded due process, that protection of children remains the priority of the legislature, and that this protection includes protecting the family unit from unnecessary disruption. To facilitate this goal, the legislature wishes to ensure that *parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information* as set forth in this chapter, provided that nothing contained in this chapter shall cause any delay in protective custody action...(2) *The department shall notify the alleged perpetrator of the allegations of child abuse and neglect at the earliest possible point in the investigation that will not jeopardize the safety and protection of the child or the investigation process.*⁴⁶

The written notice must contain the following information:

Whenever the department completes an investigation of a child abuse or neglect report..., the department shall notify the alleged perpetrator of the report and the department's investigative findings. The notice shall also advise the alleged perpetrator that:

- (a) A written response to the report may be provided to the department and that such response will be filed in the record following receipt by the department;
- (b) Information in the department's record may be considered in subsequent investigations or proceedings related to child protection or child custody;
- (c) Founded reports of child abuse and neglect may be considered in subsequent investigations or proceedings related to child protection or child custody; and
- (d) An alleged perpetrator named in a founded report of child abuse or neglect has the right to seek review of the finding as provided in this chapter.⁴⁷

b. Meaningful Access to Information

New York

In New York, meaningful access of the subject of the report to information is provided as follows:

At any time, a subject of a report and other persons named in the report may receive, upon request, a copy of all information contained in the central register; provided, however, that the commissioner is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation or the agency, institution, organization, program or other entity where such person is employed or with which he is associated, which he

⁴⁶ *Ibid.* (emphasis added).

⁴⁷ *Ibid.*

reasonably finds will be detrimental to the safety and interests of such persons.⁴⁸

c. Right to Seek Review

Washington

Washington State legislation expressly provides a right to seek review and amendment of the finding:

(1) A person who is named as an *alleged perpetrator...in a founded report of child abuse or neglect has a right to seek review and amendment of the finding.*

(2) Within 20 calendar days after receiving written notice from the department...that a person is named as an alleged perpetrator in a founded report of child abuse or neglect, he or she may *request that the department review the finding.* The request must be made in writing. If a request for review is not made as provided...the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.⁴⁹

New York

New York provides a right of review if the report is not amended or expunged:

(i) [i]f the department, within 90 days of receiving a request from the subject that record of a report be amended, does not amend the record in accordance with such request, the department shall schedule a fair hearing and shall provide notice of the scheduled hearing date to the subject, the statewide central register and, as appropriate, to the child protective service or the state agency that investigated the report.⁵⁰

d. Opportunity to Have Finding Amended

Washington

The finding may be amended: "Upon receipt of a written request for review, the department shall review and, if appropriate, *may amend the finding...*"⁵¹

New York

The New York statute provides that "[a]t any time subsequent to the completion of the investigation but in no event later than 90 days after the subject of the report is notified that the report is indicated the

⁴⁸ N.Y. Soc. Serv. Law § 422(7) (McKinney 2001).

⁴⁹ Wash. Rev. Code Ann. § 26.44.125(1), (2) (West Supp. 1999) (emphasis added).

⁵⁰ N.Y. Soc. Serv. Law § 422(8)(b)(i) (McKinney 2001).

⁵¹ Wash. Rev. Code Ann. § 26.44.125(3) (West Supp. 1999) (emphasis added).

subject may request the commissioner to amend or expunge the record of the report."⁵²

e. Designated Reviewers

Washington

Washington State legislation expressly directs that "[m]anagement level staff within the children's administration designated by the secretary shall be responsible for the review..."⁵³

f. Established Procedures for Review

Washington

In Washington State, "...[t]he review must be conducted in accordance with procedures the department establishes by rule..."⁵⁴

New York

New York State statutorily places the burden of proof at the review hearing on the child protective service agency:

(ii) [t]he burden of proof in such a hearing shall be on the child protective service or the State agency, which investigated the report, as the case may be. In such a hearing, the fact that there is a family court finding of abuse or neglect against the subject in regard to an allegation contained in the report shall create an irrebuttable presumption that said allegation is substantiated by some credible evidence.⁵⁵

g. Confidentiality of Reports, Reviews, and Hearings

Washington

In Washington, "[r]eviews and hearings conducted under this section are confidential and shall not be open to the public. Information about reports, reviews, and hearings may be disclosed only in accordance with Federal and State laws pertaining to child welfare records and child protective services reports."⁵⁶

New York

New York provides criminal penalties for the unlawful release of information contained in the central register:

"Any person who willfully permits and any person who encourages the release of any data and information contained in the central register to

⁵² N.Y. Soc. Serv. Law § 422(8)(a)(i) (McKinney 2001).

⁵³ See Note 51.

⁵⁴ *Ibid.*

⁵⁵ N.Y. Soc. Serv. Law § 422(8)(b)(ii) (McKinney 2001).

⁵⁶ Wash. Rev. Code Ann. § 26.44.125(5) (West Supp. 1999) (emphasis added).

persons or agencies not permitted by this title shall be guilty of a class A misdemeanor."⁵⁷

h. Right to Have the Record Expunged

New York

New York law expressly provides for expungement of the central register record in the following circumstances:

If it is determined at the fair hearing that there is no credible evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the department shall amend the record to reflect that such finding was made at the administrative hearing, order any child protective service or State agency that investigated the report to similarly amend its record of the report, and shall notify the subject forthwith of the determination.⁵⁸

But the central register record is expressly not expunged if the burden of proof is simply not met:

At [the] hearing, the sole question before the department shall be whether the applicant, employee, prospective consultant, volunteer, or person who was denied access to children cared for by a provider agency has been shown by *a fair preponderance of the evidence* to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report....The failure [of the local child protective service or the State agency] to sustain the burden of proof at a hearing...shall not result in the expungement of an indicated report but shall be noted on the report maintained by the central register and shall preclude the department from notifying a party which subsequently makes an inquiry to the department...that the person about whom the inquiry is made is the subject of an indicated report.⁵⁹

i. Notice of Outcome of Review

Washington

In Washington, "...Upon completion of the review, the *department shall notify the alleged perpetrator in writing of the agency's determination*. The notification must be sent by certified mail, return receipt requested, to the person's last known address."⁶⁰

⁵⁷ N.Y. Soc. Serv. Law § 422(12) (McKinney 2001).

⁵⁸ N.Y. Soc. Serv. Law § 422(8)(c)(i) (McKinney 2001).

⁵⁹ N.Y. Soc. Serv. Law § 424-a(2)(d) (McKinney 1997).

⁶⁰ *Ibid.*

New York

In New York, the department reviews all the information, makes a determination and notifies the subject of the report of his fairing hearing rights:

If it is determined after a review by the department...that there is some credible evidence to prove that the subject committed the acts or acts of abuse or maltreatment giving rise to the indicated report and that such act or acts are relevant and reasonably related to issues concerning the employment of the subject by the provider agency or the subject being allowed to have regular and substantial contact with children cared for by a provider agency or the approval or disapproval of an application that has been submitted by the subject of a licensing agency, the department shall inform the inquiring party that the person about whom the inquiry is made is the subject of an indicated report of child abuse and maltreatment; the department shall also notify the subject of the inquiry of his or her fair hearing rights.⁶¹

Then, depending on the result of providing this information to others, the subject of the inquiry will be notified as follows:

Upon termination of employment of an employee of a provider agency, who is the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment, the agency shall furnish the employee with a written statement setting forth whether such termination was based, in whole or in part, on such indicated report, and if so, the reasons for the termination of employment.⁶²

j. Right to Request an Adjudicative Proceeding

Washington

Washington State legislation also provides for an adjudicative proceeding:

If, following the agency review, the report remains founded, the person named as the alleged perpetrator in the report *may request an adjudicative hearing to contest the finding*. The adjudicative proceeding is governed by [another provision] and this section. The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency determination. If a request for an adjudicative proceeding is not made as provided, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.⁶³

⁶¹ N.Y. Soc. Serv. Law § 424-a(1)(e)(v) (McKinney 1997).

⁶² N.Y. Soc. Serv. Law § 424-a(2)(b)(ii) (McKinney 1997).

⁶³ Wash. Rev. Code Ann. § 26.44.125(4) (West Supp. 1999) (emphasis added).

Georgia

Georgia law provides that:

Notwithstanding any other provision of law, the decision of the Office of State Administrative Hearings...shall constitute the final administrative decision. Any party shall have the right of judicial review of that decision...The procedures for such appeal shall be the same as those for judicial review of contested cases...The review and records thereof shall be closed to the public and not subject to public inspection. The decision of the superior court...shall not be subject to further appeal or review.⁶⁴

2. Procedures and Protections for Employment

To protect children from harm caused by individuals working with children, an increasing body of individuals and organizations have access to information maintained in central registries. Certain safeguards specifically serve to protect an individual's interest in his or her employment.

a. Increased Access to Information

New York

New York law *mandates*:

- That a *licensing agency* ask the department of child protective services and that the department inform the agency and the subject of the inquiry:
Whether an applicant for a certificate, license, or permit, assistants to group family day care providers, the director of a camp, and any person over the age of 18 who resides in the home of a person who has applied to become an adoptive parent or a foster parent or to operate a family day care home or group family day care home and has been or is currently the subject of an indicated child abuse and maltreatment report on file with the statewide central register...;⁶⁵
- That a provider agency ask of the department and that the Department inform such agency and the subject of the inquiry: whether any person *who is actively being considered for employment* and who will have the potential for regular and substantial contact with children who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register...prior to permitting such person to have unsupervised contact with children;⁶⁶
- That a provider agency ask the department and that the department inform such agency and the subject of the inquiry: whether any

⁶⁴ Ga. Code § 49-5-184(e) (1996).

⁶⁵ N.Y. Soc. Serv. Law § 424-a(1)(a) (McKinney 1997) (emphasis added).

⁶⁶ *Ibid.* (emphasis added).

person who *is employed by an individual, corporation, partnership or association which provides goods or services* to such agency who has the potential for regular and substantial contact with children who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register...prior to permitting such person to have unsupervised contact with children;⁶⁷

- That an authorized agency shall inquire of the Department and the Department shall inform such agency and the subject of the inquiry, whether any person who has applied to adopt a child is the subject of an indicated child abuse and maltreatment report on file with the statewide central register....⁶⁸

New York also *allows*:

- That a provider agency may inquire of the Department and the Department must inform such agency and the subject of the inquiry whether any person who is currently employed and who has the potential for regular and substantial contact with children who are cared for by such agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment...Inquiries made to the Department by a provider agency on current employees shall be made no more often than once in any six months period.⁶⁹
- That a provider agency may inquire of the Department and the Department shall, upon receipt of such inquiry...inform such agency and subject of the inquiry whether any person who is *to be hired as a consultant* by such agency who has the potential for regular and substantial contact with children who are cared for by the agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register...⁷⁰
- That a provider agency may inquire of the Department and the Department shall, upon receipt of such inquiry...inform such agency and the subject of the inquiry whether any person who has volunteered his or her services to such agency and who will have the potential for regular and substantial contact with children who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the Statewide central register...⁷¹

⁶⁷ *Ibid.*(emphasis added).

⁶⁸ N.Y. Soc. Serv. Law § 424-a(1)(c) (McKinney 1997).

⁶⁹ N.Y. Soc. Serv. Law § 424-a(1)(b)(i) (McKinney 1997) (emphasis added).

⁷⁰ N.Y. Soc. Serv. Law § 424-a(1)(b)(ii) (McKinney 1997) (emphasis added).

⁷¹ N.Y. Soc. Serv. Law § 424-a(1)(b)(iii) (McKinney 1997) (emphasis added).

- b. Time, Notice, and Review Procedural Protections Where Persons Outside of the Child Protective Proceeding have Access to the Central Register

New York

The New York statute demonstrates that greater access to information calls for more protections—by providing, for example, for written notice of the inquiry:

Any person who has applied to a licensing agency for a certificate, license or permit or who has applied to be an employee of a provider agency or who has applied to an authorized agency to adopt a child, or who may be hired as a consultant or used as a volunteer by a provider agency and any other person about who an inquiry is made to the department...*shall be notified* by such agency at the time of the application or prior to the time that a person may be hired as a consultant or used as a volunteer *that the agency will or may inquire of the department whether such person is the subject of an indicated child abuse and maltreatment report.* All employees of a provider agency shall be notified by their employers that an inquiry may be made to the department...and *no such inquiry shall be made regarding any employee until such notice has been made.*⁷²

It also limits the conditions for releasing the information to others: *The department shall inform the provider or licensing agency that the person is the subject of an indicated child abuse and maltreatment report only if:* (a) the time for the subject of the report to request an amendment or expungement of the record of the report...has expired without any such request having been made; or (b) such request was made within such time and a fair hearing regarding the request has been finally determined by the commissioner and the record of the report has not been amended to delete the person as a subject of the report or expunged.⁷³

- c. Showing of Relationship Between the Maltreatment and the Employment

New York

New York law mandates that the report not be expunged if there is a showing of a relationship between the maltreatment and the employment; if, in the alternative, there is no such showing, the department is precluded from informing a provider or licensing agency of the indicated report.⁷⁴

⁷² N.Y. Soc. Serv. Law § 424-a(1)(d) (McKinney 1997) (emphasis added).

⁷³ N.Y. Soc. Serv. Law § 424-a(1)(e) (McKinney 1997) (emphasis added).

⁷⁴ N.Y. Soc. Serv. Law § 422(8)(c)(ii) (McKinney 2001).

Upon a determination made at a fair hearing that the acts of abuse or maltreatment are relevant and reasonably related to employment of the subject by a provider agency or the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency, the department shall notify the subject forthwith...The *failure to determine at the fair hearing that the act or acts of abuse and maltreatment are relevant and reasonably related to the employment* of the subject by a provider agency or the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency *shall preclude the department from informing a provider or licensing agency which makes an inquiry to the department...concerning the subject that the person about whom the inquiry is made is the subject of an indicated child abuse or maltreatment report.*⁷⁵

VIII. CONCLUSION

This paper has briefly introduced (1) the historical context from which child abuse and neglect central registries arose, (2) the original purpose and many uses of child abuse and neglect central registries, (3) the need to balance various differing interests with respect to the maintenance of information in a central registry, (4) the concept of Due Process as it applies to child abuse and neglect central registries, and (5) various procedural safeguards serving to protect those Due Process interests.

Child advocacy organizations, the U.S. Department of Health and Human Services, courts, and States have identified a due process interest that is implicated when a person's name is listed on a central register of child abuse and neglect information. Accordingly, some States have given significant attention to enacting legislation that protects this interest against erroneous deprivation. This is especially true in cases where access to the central register information is extended beyond the child protective agency. More and more States are likely to enact similar legislation weighing the protection of the due process interest against the Government's interest in serving its primary function and the fiscal and administrative burdens that additional or substitute procedural requirements might entail.

⁷⁵ *Ibid.* (emphasis added).